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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,737	09/09/2003	Amanda B. Mitchell	9538.18395-PROV FOR	3374
26308	7590	03/08/2005	EXAMINER	
RYAN KROMHOLZ & MANION, S.C.			NORDMEYER, PATRICIA L	
POST OFFICE BOX 26618			ART UNIT	
MILWAUKEE, WI 53226			PAPER NUMBER	

1772

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/658,737	<b>Applicant(s)</b> MITCHELL ET AL.	
	<b>Examiner</b> Patricia L. Nordmeyer	<b>Art Unit</b> 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 15-21 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1 - 14, drawn to a fabric securing system, classified in class 428, subclass 40.1.
  - II. Claims 15 - 21, drawn to a method for securing a first piece of fabric having a first side and a second side to a second piece of fabric having a first side and a second side, classified in class 156, subclass 60.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions Group I, claims 1 – 14 and Group II, claims 15 - 21 are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the process for using the product as claimed can be practiced with another materially different product such as a piece of string with tabs on the end containing hook and loop material for attachment.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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4. During a telephone conversation with Joseph Kromholz on February 24, 2005 a provisional election was made with traverse to prosecute the invention of a fabric securing system, claims 1 - 14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 15 – 21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 – 4, 7 – 11 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Taylor (USPN 3,947,896).

Taylor discloses a fabric securing system for securing a first piece of fabric relative to a

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second piece of fabric (Column 1, lines 8 – 10). The system comprises a strip of flexible material having a first side, a second side and a perimeter having predetermined configuration (Column 1, 43 – 44; Figure 2, #30), wherein the first side has at least portion thereof coated with an adhesive material (Column 3, lines 13 – 17; Figure 2, #34) and a channel, or non-adhesive tabular are integrally formed with said strip, formed by the strip and second piece of fabric with the first piece of fabric secured within the channel (Figure 2, #33; Figure 1, #10, 20 and 30) as stated in claims 1 and 9. With regard to claim 2, the first side of the flexible strip further comprises a first section forming an adhesive section (Figure 2, #31 and 34), a second section integrally formed between the first and second sections that forms a channel with second piece of fabric (Figure 2, #33; Figure 1, #10, 20 and 30) and a third section forming an adhesive section (Figure 2, #32 and 35). The first and third sections of the strip are adhesively connected to said second piece of fabric (Figure 1), wherein said first piece of fabric is slidably secured with said channel (Figure 1, #20) as stated in claim 3. Regarding claims 4 and 8, the channel, or second section, is non-adhesive, non-coated section (Figure 2, #33; Column 1, lines 53 – 56). The securing system further comprises a removable backing material located on the first side of the material (Column 2, lines 33 – 37; Figure 4, #36 and 37) with second non-adhesive tabs (Figure 4, #38 and 39) as in claims 7, 10 and 11. As shown in Figures 2 – 4, the second side of the strip of flexible material has at least a portion of adhesive material as stated in claim 14.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 5, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor in view of Huang (USPN 5,308,278).

Taylor discloses a fabric securing system for securing a first piece of fabric relative to a second piece of fabric (Column 1, lines 8 – 10) for the purpose attaching two adjacent garments worn by a person to maintain proper alignment of the garments (Column 1, line 67 to Column 2, line 2). However, Taylor fails to disclose the first piece of fabric being a bra strap or underwear bottom and the second piece of fabric being a shirt.

Huang discloses a flexible string brassiere retainer (Column 1, lines 5 – 10), where a first piece of fabric is a bra strap or underwear bottom (Figure 2, #20) and the second piece of fabric is a shoulder pad of a shirt (Figure 2, #12; Figure 3, lines 12 – 17) that the flexible string brassiere retainer is attached for the purpose of confining the bra strap of a brassiere about the upper shoulder area of a person wearing the same (Column 1, lines 9 – 10) in a variety of different garments (Column 2, lines 28 – 30).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the was made to have provided first piece of fabric being a bra strap or underwear bottom and the second piece of fabric being a shoulder pad of a shirt Taylor since Taylor discloses a securing system for attaching two adjacent garments worn by a person and as shown by Huang.

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It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the first piece of fabric being a bra strap or underwear bottom and the second piece of fabric being a shoulder pad of a shirt in order to confine the bra strap of a brassiere about the upper shoulder area of a person wearing the same in a variety of different garments as taught by Huang.

10. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor in view of Huyck (USPN 5,913,413).

Taylor discloses a fabric securing system for securing a first piece of fabric relative to a second piece of fabric (Column 1, lines 8 – 10) for the purpose attaching two adjacent garments worn by a person to maintain proper alignment of the garments (Column 1, line 67 to Column 2, line 2). However, Taylor fails to disclose said section of said flexible material further comprising a pad.

Huyck teaches a lingerie strap cushioning device, that attaches around the shoulder straps of a brassiere to the increase the weight distribution at the shoulders of the wearers (Column 1, lines 5 – 10), where the cushioning device folds around the strap (Column 2, lines 23 – 26) and is secured with a fastening device that selectively secures the upper portion to the lower portion (Column 2, lines 38 – 51) for the purpose of providing a cushioning effect beneath the strap while increasing the weight distribution at the shoulders of the wearers without a bulky protuberance.

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It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the cushioning pad in Taylor in order to provide a cushioning effect beneath the strap while increasing the weight distribution at the shoulders of the wearers as taught by Huyck.

### *Conclusion*

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,146,239 to Magliochetti is cited to show that is known to use retaining devices in combination with bra straps, wherein the retaining devices use multiple different fastening attachments.

U.S. Patent No. 2,719,303 to Lodenius is cited to show that is known to use retaining devices in combination with bra straps, wherein the retaining devices use multiple different fastening attachments, in order to keep the straps hidden underneath clothing.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571) 272-1496. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia L. Nordmeyer  
Examiner  
Art Unit 1772

*pln*  
pln

*Harold Pyon*  
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1772

3/4/05